City of Lafayette Staff Report

To:	City Council
From:	Sarah Allen, Planning Intern
Date Written:	October 3, 2008
Meeting Date:	October 14, 2008
Subject:	Agreement relating for installation and maintenance of existing and new landscaping between property owners, Mark and Katherine Lefanowicz and the City of Lafayette, for property located at 3372 Hermosa Way 167-230-002.

Introduction

The attached agreement relating to the installation and maintenance of existing and new landscaping between Mark and Katherine Lefanowicz and the City of Lafayette was one of the conditions of approval for the Design Review application DR16-07. The proper documentation has been prepared and the attached agreement meets the requirements for approval.

Recommendation

Accept agreement relating to installation and maintenance of existing and new landscaping and authorize the City Clerk to record.

10G

Record at the request of City of Lafayette
Return to:
City of Lafayette
Attn: SA
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, CA 94549

AGREEMENT FOR INSTALLATION AND MAINTENANCE OF EXISTING AND NEW LANDSCAPING

THIS AGREEMENT is made this _____ day of _____, _____, between Mark Lefanowicz and Katherine Lefanowicz, Trustees of the Lefanowicz Family Trust dated December 12, 2007, hereafter referred to as "Property Owner", and the CITY OF LAFAYETTE, a Municipal Corporation, hereafter referred to as "City".

RECITALS

THIS AGREEMENT is based upon the following facts:

1. Property Owner is the owner of real property in the City of Lafayette, 3372 Hermosa Way, (Assessor's Parcel Number 167-230-002) described in Exhibit "A" attached to this Agreement and made a part of it by this reference;

2. On October 18, 2007, the City granted a Design Review Approval to the Property Owner in accordance with the zoning ordinance of the City of Lafayette.

3. By the terms of the Design Review Approval, the Property Owner is required to install and maintain landscaping in accordance with a plan approved by the City on March 4, 2008, a copy of which is on file in the City Office to which reference is made for further particulars;

4. Both parties recognize that the installation and maintenance of landscaping is an integral part of the Property Owner's plan for development of the property, and is necessary to carry out the purpose and intent of the City's Land Use regulations, and that the development would not have been approved by City without the assurance that this Agreement would be executed by Property Owner.

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES, as follows:

1. PURPOSE: The purpose of this Agreement is to assure (a) installation of the landscaping in accordance with landscape plan previously approved by the City and (b) continued maintenance and care of the existing landscaping.

2. PROPERTY SUBJECT TO AGREEMENT. The property which is the subject of this Agreement is described in Exhibit "A" which is attached to this Agreement and incorporated in it by this reference.

3. CITY PROCEEDINGS. Reference is made to the Zoning Administrator proceedings conducted by the City (Planning File No. DR16-07) and the landscaping plan for the property, a copy of which is on file in the City Offices.

4. LANDSCAPING AS A BENEFIT. Property Owner agrees that the landscaping which he/she is obligated to provide will materially benefit his/her property and is necessary to comply with the 26 condition(s) imposed by the City as a requirement of the development of the property.

5. DUTY TO INSTALL AND MAINTAIN LANDSCAPING. Property Owner agrees to complete the installation of the approved landscaping prior to final building inspection approval, and diligently to maintain and care for the landscaping which he/she installs, using generally accepted methods of cultivation and watering. Property Owner shall maintain that standard care necessary to prevent the landscaping from deteriorating to the extent that its value as landscaping is destroyed.

6. CITY MAY MAINTAIN LANDSCAPING. Property Owner agrees that if he/she fails to meet the standard of maintenance necessary to keep the landscaping in a healthy condition, the City will give written notice of the deficiency to the owner who shall have 20 days to make the necessary correction, and if the correction is not made within 20 days the City may elect to take the steps necessary to assure that the landscaping is maintained and cared for. To do this, the City shall service a notice of its intent to enter the premises for this purpose. The City shall either personally serve the notice upon the Property Owner or mail a copy of it by Certified Mail at the Property Owner's last known address, or as shown on the tax rolls at least 15 days in advance of the date when it intends to enter the premises. For this purpose, the City may enter upon the property and perform such work as it considers reasonably necessary and proper to restore and maintain the landscaping. The City may act either through its own employees or through an independent contractor.

7. CITY'S COSTS OF MAINTENANCE A LIEN. If the City incurs costs in restoring or maintaining the landscaping after following the procedure set forth in Paragraph 6 above, the City shall make demand on the Property Owner for payment, if the Property Owner fails to pay the costs incurred by the City within 30 days of the date demand was made, the City may make the costs a lien upon the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 7 percent a year until paid.

8. ADDITIONAL REMEDIES. The City may as an alternative to the lien procedure set forth above in Paragraph 7, bring legal action to collect the sums due as the result of making of expenditures for restoration and maintenance of the landscaping. The Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, the Property Owner agrees to pay the City a reasonable sum as attorney's fees and court costs, together with interest from the date which is 30 days after the City has given its notice, under Paragraph 6 above.

9. NOTICES. Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed to the Planning Services Manager, City of Lafayette, 3675 Mt. Diablo Boulevard, Suite 210, Lafayette, CA 94549. Notices to the Property Owner shall be addressed to him/her at the following address:

Mark & Katherine Lefanowicz
3372 Hermosa Way
Lafayette, CA 94549

When Property Owner ceases to be the owner, he/she may file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so, the subsequent Grantee is charged with the obligation under this Agreement.

10. MISCELLANEOUS TERMS AND PROVISIONS:
   (a) If any provision of this contract is adjusted invalid, the remaining provisions of it are not affected.
   (b) Notice to Property Owner shall be considered to have been given to him/her when sent to his/her address above stated.
   (c) This writing contains a full, final and exclusive statement of the contract of the parties.
   (d) Property Owner appoints the City as his/her Attorney-in-fact, to do all acts and things which the City considers necessary to restore or maintain the landscaping approved under the Zoning Administrator proceedings.
   (e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.
   (f) The obligations upon the owner signing this Agreement terminates personally as to him/her when he/she conveys his/her interest in the property and files for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner(s) takes title subject to the requirements of this agreement.

11. AGREEMENT ATTACHES TO LAND. This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

12. CITY MAY REQUIRE ADDITIONAL SECURITY. If upon execution of this Agreement or during the course of performance the City considers that it is necessary to have the Property Owner post additional security to guarantee the performance of his/her obligations, the City may require the Property Owner to post additional security. The City may require either a cash deposit or a surety bond guaranteeing performance, signed by sureties, and in a form deemed satisfactory to the City. The condition of the security shall be that if the Property Owner fails to perform his/her obligations under this Agreement, the City may in the case of a surety bond require the sureties to perform the obligations of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETTE:

_____

Mayor, City of Lafayette

ATTEST:

_____

City Clerk

PROPERTY OWNER(S):

Mark Lefanowicz and Katherine Lefanowicz, Trustees of the Lefanowicz Family Trust dated December 12, 2007

Katherine Lefanowicz

Katherine Lefanowicz, Trustee

Mark Lefanowicz

Mark Lefanowicz, Trustee

NOTE: Property Owner's signature(s) must be notarized on a separate notary sheet. Signatures must match letter-for-letter with printed name on this agreement.

ATTACHMENTS: Exhibit "A" Legal Description

STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

On 30 day of Sept, 2008 before me, Rosario C. Sevilla personally appeared Katherine Lefanowicz and Mark Lefanowicz, who proved to me on the basis of satisfactory evidence to be the persons whose names is subscribed to the within instrument and who acknowledged to me that he executed the same in ~~his~~ their authorized capacity, and by ~~his~~ their signatures on the instrument the persons or entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Rosario C. Sevilla

Notary Public

(Seal)

ROSARIO C. SEVILLA
COMM. #1752352
NOTARY PUBLIC - CALIFORNIA
CONTRA COSTA COUNTY
COMM. EXPIRES JUNE 21, 2011

EXHIBIT "A"

Legal Description
3372 Hermosa Way, Lafayette, CA 94549
APN: 167-230-002-5

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA, CITY OF LAFAYETTE, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

PORTION OF LOT 72, MAP OF SUBDIVISION NO. 1 OF BROOK-WOOD ACRES, FILED APRIL 22, 1913, MAP BOOK 9, PAGE 217, CONTRA COSTA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTH LINE OF SAID LOT 72 AT THE NORTHWEST CORNER OF THE PARCEL OF LAND DESCRIBED AS PARCEL ONE IN THE DEED TO SAMUEL E. JACKSON, RECORDED APRIL 16, 1953, BOOK 2106, OFFICIAL RECORDS, PAGE 218; THENCE FROM SAID POINT OF BEGINNING SOUTH 1° 44' WEST ALONG THE WEST LINE OF SAID JACKSON PARCEL, 241.94 FEET TO THE NORTH LINE OF THE PARCEL OF LAND DESCRIBED AS PARCEL ONE IN THE DEED TO WILLIAM R. SOMMER, RECORDED JULY 31, 1950, BOOK 1604, OFFICIAL RECORDS, PAGE 424; THENCE SOUTH 88° 16' EAST ALONG SAID NORTH LINE AND ALONG THE EXTENSION SOUTH 88° 16' EAST THEREOF, 184.82 FEET TO THE SOUTHWEST CORNER OF THE PARCEL OF LAND DESCRIBED AS PARCEL ONE IN THE DEED TO FRANK FASSIO, ET UX, RECORDED JANUARY 26, 1954, BOOK 2260, OFFICIAL RECORDS, PAGE 113; THENCE NORTH 1° 44' EAST ALONG THE WEST LINE OF SAID FASSIO PARCEL, 2260 OR 113, 250.61 FEET TO THE NORTH LINE OF SAID LOT 72; THENCE ALONG SAID NORTH LINE SOUTH 85° 10' WEST, 153.31 FEET AND NORTH 73° 03' WEST, 33.7 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT CREATED IN REFERENCE TO THE PREMISES IN THE DEED TO ACALANES INVESTMENT CORPORATION RECORDED JUNE 29, 1950, BOOK 1584, OFFICIAL RECORDS, PAGE 576, "FOR USE AS A ROADWAY, FOR VEHICLES OF ALL KINDS, PEDESTRIANS AND ANIMALS AND AS A RIGHT OF WAY FOR WATER, GAS, OIL AND SEWER PIPE LINES AND FOR TELEPHONE, ELECTRIC LIGHT AND POWER LINES, TOGETHER WITH THE NECESSARY POLES OR UNDERGROUND CONDUITS TO CARRY SAID LINES" OVER A PORTION OF LOT 72, MAP OF SUBDIVISION NO. 1 OF BROOK-WOOD ACRES, FILED APRIL 22, 1913, MAP BOOK 9, PAGE 217, CONTRA COSTA COUNTY RECORDS, BEING A STRIP OF LAND 20 FEET IN WIDTH, THE NORTH LINE OF WHICH IS PARALLEL WITH AND 20 FEET NORTHERLY MEASURED AT RIGHT ANGLES FROM THE SOUTH LINE THEREOF AND WHICH SOUTH LINE IS DESCRIBED AS FOLLOWS:

BEGINNING IN THE CENTER LINE OF LAFAYETTE ROAD AT THE NORTH LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO WILLIAM R. SOMMER, RECORDED JULY 31, 1950, BOOK 1604, OFFICIAL RECORDS, PAGE 424; THENCE FROM SAID POINT OF BEGINNING, SOUTH 88° 16' EAST, ALONG SAID NORTH LINE 243.67 FEET.

END OF DOCUMENT